

1  
2  
3  
4  
5  
6  
**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

7 KEVIN RAY HOLMES,

Case No.: 3:17-cv-00320-RCJ-WGC

8 Plaintiff,

**ORDER**

9 v.

Re: ECF No. 54

10 ISIDRO BACA, *et al.*,

11 Defendants.  
12

13 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 54).<sup>1</sup> Plaintiff  
14 bases his motion on (1) the fact that he has been granted in forma pauperis status and is unable to  
15 afford counsel, (2) that the substantive issues and procedural matters in this case are too complex  
16 for Plaintiff's comprehension and abilities, and (3) that Plaintiff's incarceration will greatly limit  
17 his ability to effectively litigate his case.

18 Plaintiff further states he "cannot articulate his claims in light of the restrictions due to the  
19 Covid-19 pandemic" and "does not possess the ability to locate witnesses, some former inmates  
20  
21

22  
23 <sup>1</sup> This is actually Plaintiff's second request for appointment of counsel. *See*, ECF No. 32, denied on  
11/20/19 in ECF No. 35.

1 and other staff members at the N.D.O.C., nor can he collect evidence while confined to prison.”

2 (*Id.* at 7.)

3 As discussed in this court’s prior order denying Plaintiff’s motion for appointment of  
4 counsel (ECF No. 35), a litigant in a civil rights action does not have a Sixth Amendment right to  
5 appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States  
6 Supreme Court has generally stated that although Congress provided relief for violation of one’s  
7 civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring  
8 complaints to federal court and not a right to discover such claims or even to litigate them  
9 effectively once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

10 While any *pro se* inmate such as Mr. Holmes would likely benefit from services of counsel,  
11 that is not the standard this court must employ in determining whether counsel should be appointed.  
12 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

13 In very limited circumstances, federal courts are empowered to request an attorney to  
14 represent an indigent civil litigant. The circumstances in which a court will grant such a request,  
15 however, are exceedingly rare, and the court will grant the request under only extraordinary  
16 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);  
17 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

18 A finding of such exceptional or extraordinary circumstances requires that the court  
19 evaluate both the likelihood of Plaintiff’s success on the merits and the *pro se* litigant's ability to  
20 articulate his claims in light of the complexity of the legal issues involved. Neither factor is  
21 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,

1 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to  
2 articulate his claims. (ECF Nos. 1, 6, 8, 10, 30, 32, 33, 42, 48.)

3 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

4 If all that was required to establish successfully the  
5 complexity of the relevant issues was a demonstration of  
6 the need for development of further facts, practically all  
7 cases would involve complex legal issues. Thus,  
8 although *Wilborn* may have found it difficult to  
articulate his claims *pro se*, he has neither demonstrated  
a likelihood of success on the merits nor shown that the  
complexity of the issues involved was sufficient to  
require designation of counsel.

9 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying  
10 the request for appointment of counsel because the Plaintiff failed to establish the case was  
11 complex as to facts or law. 789 F.2d at 1331.

12 Despite Plaintiff's characterization of this action as being complicated, the substantive  
13 claim left in this action is not unduly complex. U. S. District Judge Robert C. Jones denied  
14 summary judgment as to equal protection claim against Defendant Skulstad. (ECF No. 53 at 3.)

15 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of  
16 the likelihood of success on the merits of his claims.

17 The United States Supreme Court has generally stated that although Congress provided  
18 relief for violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is  
19 only a right to bring complaints to federal court and not a right to discover such claims or to litigate  
20 them effectively once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

21 The court does not have the power "to make coercive appointments of counsel." *Mallard v.*  
22 *U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under exceptional  
23 circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282

1 (2010)]. Plaintiff has not shown that the exceptional circumstances necessary for appointment of  
2 counsel are present in this case.

3 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of  
4 Counsel (ECF No. 54).

5 **IT IS SO ORDERED.**

6 Dated: October 6, 2020.

7 

8 WILLIAM G. COBB  
9 UNITED STATES MAGISTRATE JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23